91-621

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

Renee Plante, Petitioner

v.

State of New Hampshire, Respondent

On Writ of Certiorari

To the New Hampshire Supreme Court

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I. QUESTIONS PRESENTED FOR REVIEW.

Petitioner was subjected to a search that was specifically designated as for weapons, prior to entering the lobby area of a county courthouse. As part of the search for weapons, Petitioner provided her purse to a bailiff. Petitioner was not advised that she could avoid the search by leaving the building. Petitioner was not advised that once the search began it would be completed. The bailiff searched the purse and found cigarette rolling papers. He then found a small "Sucrets" container. Petitioner made clear that she did not consent to the opening of the container. The bailiff opened the container and found a small quantity of marijuana inside.

The question presented for review is:

Whether the warrantless search of the Sucrets container for weapons, characterized by the New Hampshire Supreme Court as an administrative search, violated Petitioner's right to be free of unreasonable searches and seizures, as guaranteed by the Fourteenth Amendment to the United States Constitution, when Petitioner did not consent to the opening of the container, was not in a position to have implied knowledge of the extent of the search (i.e., Petitioner was not a person in a heavily regulated industry or knowledgeable of court search procedures), was not clearly advised that once the search was begun, Petitioner would be unable to withdraw from the search, and was not provided with the option of avoiding the search by leaving the building.

II. LIST OF PARTIES.

All parties are listed in the caption.

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V. PRAYER FOR RELIEF.

Petitioner, Renee Plante, through counsel, prays that a Writ of Certiorari be issued to the Supreme Court for the State of New Hampshire to review her conviction for possession of a controlled drug, marijuana, Revised Statutes Annotated 318-B:2 (Supp. 1990). Said conviction was affirmed by an opinion of the New Hampshire Supreme Court dated August 2, 1991.

VI. CITATION TO OPINION BELOW.

The opinion of the New Hampshire Supreme Court in the instant matter appears at 134 N.H. ___, 594 A.2d 165 (1991).

VII. JURISDICTION.

The judgment of the New Hampshire Supreme Court was entered on August 2, 1991. It affirmed Petitioner's conviction dated June 8, 1990. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

VIII. STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

A. Amendment IV, United States Constitution.

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

B. Amendment XIV, U.S. Constitution, Section 1.

> All persons born or naturalized in the United States and subject to the jurisdiction thereof are

citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

C. New Hampshire Revised Statutes Annotated 318-B:2 (Supp. 1990).

I. It shall be unlawful for any person to manufacture, possess, have under his control, sell, purchase, prescribe, administer, or transport or possess with intent to sell, dispense, or compound any controlled drug, or controlled drug analog, or any preparation containing a controlled drug, except as authorized in this Chapter.

IX. STATEMENT OF THE CASE.

Petitioner's trial counsel filed a motion to suppress the contents of a Sucrets container seized from the Petitioner. The ruling of the trial court in this matter was based upon a five page Agreed Statement of Facts

(Appendix A). The trial court denied Petitioner's motion to suppress the contents of the Sucrets container. The trial court's decision was the basis of Petitioner's appeal to the New Hampshire Supreme Court. The trial court was affirmed.

On May 5, 1989, Petitioner entered the Strafford County (New Hampshire) Justice and Administration Building with a male companion. There is no evidence that Petitioner had previously visited the building or that Petitioner had a history of prior criminal arrests or convictions. Nothing in the record establishes that Petitioner had any prior familiarity with weapons search techniques.

The Strafford County Superior Court, a New Hampshire trial court of general jurisdiction, and the Court's Clerk's Office are located on the

second floor of the Administration Building. The second floor is primarily accessible by an elevator. Petitioner entered the building at approximately 4:00 p.m. and rode in the elevator to the second floor.

A sign was posted and visible in the elevator in which Petitioner rode that stated, "All persons entering this court facility are deemed to have consented to security screening of their person and property for weapons." Agreed Statement of Facts, at ¶5.

"When the elevator door opened on the second floor, [Petitioner] exited the elevator and found herself at a security station managed by a bailiff." Agreed Statement of Facts, at ¶8. The security station had been operated from 8:00 a.m. until 4:30 p.m. on May 5, 1989. "[T]he security station located on the second floor . . . has, as part

of the security system, an airport-type screening device, which is sensitive to metallic objects." Agreed Statement, at ¶9. "[I]n addition to the airport-type security device, the bailiffs, in theory, also check any handbags, briefcases, and/or any other type of objects being carried by the person seeking to enter the second floor, and any containers found therein that the bailiffs suspect may contain weapons." Agreed Statement, at ¶10.

The bailiff that Petitioner encountered did not have a search warrant and did not recognize Petitioner. The bailiff had no reason to suspect that Petitioner was carrying any type of weapon. Agreed Statement, at ¶¶16, 17, and 18.

When Petitioner appeared nervous, the bailiff explained that the security check was simply for weapons.

Petitioner then relinquished her pocketbook.

Ordinarily, before a security search begins, the bailiff informs people that they may leave rather than submit to a search. The bailiff "cannot specifically remember whether he so informed the [Petitioner]." Agreed Statement, at ¶27. The Petitioner "does not remember the bailiff informing her she had the right to leave rather than being searched." Agreed Statement, at ¶28.

The bailiff also typically informs people "that once he begins a search of their belongings, he does not stop until he has finished, even if requested to do so by the person." Again, the bailiff does not specifically recall so advising the Petitioner. Agreed Statement, at ¶29. The Petitioner does not remember the

bailiff informing her of this policy. Agreed Statement, at ¶30.

The search conducted by the bailiff was pursuant to an order promulgated by the Chief Judge of the Superior Court (Appendix C). The order appears to provide for the withdrawal of the person entering the facility if the person causes the metal detecting device to sound.

In searching the pocketbook, the bailiff found cigarette rolling papers. As he continued to search the pocketbook, he also found a Sucrets metal container in the last pocket of the purse. Agreed Statement, at ¶33. The size of the Sucrets container was approximately 3 1/2 by 4 1/2 inches. The bailiff was familiar with deadly weapons that could be hidden in a container of this size. Agreed Statement, at ¶35.

The bailiff was familiar with the use of cigarette rolling papers for the purpose of rolling marijuana cigarettes. He was of the opinion that people who have cigarette papers are probably using them for consumption of marijuana. Agreed Statement, at ¶37-38.

"[A]s the bailiff held the Sucrets container in his hand, but before he opened it, [P]etitioner reached across the table and grabbed the bailiff's hand. She said more than once 'please don't open the container up.'" Agreed Statement, at ¶41-43. The Sucrets container contained seven burned marijuana cigarettes and one unburned marijuana cigarette. Agreed Statement, at ¶52. The marijuana cigarettes became the basis for Petitioner's prosecution.

While it was stipulated that the bailiff may have known of weapons

concealable in a small Sucrets box, there is no evidence that established that Petitioner shared this knowledge. Also, there is no evidence in the record of this matter that Petitioner had previously been subjected to a courthouse security screen for weapons.

X. REASONS FOR GRANTING THE WRIT OF CERTIORARI.

A. The Writ of Certiorari should be granted because it will allow the Court to clearly define the parameters of the administrative search exception to the Fourth Amendment and make explicit that notice of the administrative search and the right to withdraw from the activity in question must be given to the person or business subject to the search.

The New Hampshire Supreme Court considered the issues presented in this

matter as "whether the search of the Sucrets container was a reasonable search falling within the administrative search exception," and "whether the defendant had the right to terminate the search once she relinquished her handbag to the bailiff." 594 A.2d at 166. The analysis of the administrative search exception to the warrant requirement in this matter was the same for both State and Federal constitutional purposes. State v. Turmelle, 132 N.H. 148, 153, 562 A.2d 146 (1989); Burger v. New York, 482 U.S. 691, 107 S. Ct. 2636, 96 L.Ed. 2d 601 (1987).

The New Hampshire Supreme Court's application of the administrative search exception unreasonably stretched the bounds of the exception beyond its traditional areas of application in the context of commercial property and

where knowledge of the search is impliedly present. See, Burger, supra, and Skinner v. Railway Labor Executive Assn, 489 U.S. 602, 622, 109 S. Ct. 1402, 103 L.Ed. 2d 639 (1989) (Intrusion of toxicological testing well known to covered employees.) As well, defendant's right to withhold consent should have been analyzed at a point prior to the commencement of the search in this matter, rather than at the point at which the Sucrets box was isolated.

1. Administrative Search Exception.

The administrative search exception to the warrant requirement was initially approved in the context of commercial property where the expectation of privacy is "particularly attenuated." Burger, 482 U.S. at 700. See also, Donovan v. Dewey, 452 U.S.

594, 599, 101 S. Ct. 2534, 69 L.Ed. 2d 262, 269 (1981) (expectation of privacy in commercial property is reduced). But, see Griffin v. Wisconsin, 482 U.S. 868, 107 S. Ct. 3164, 97 L.Ed. 2d 709 (1987).

The administrative search exception is also ordinarily applied in the context of pervasively regulated industries. Burger v. New York, supra (automobile dissemblers); Donovan v. Dewey, supra (underground and surface mines); Colonnade Corp. v. United States, 397 U.S. 72, 75, 90 S. Ct. 774, 25 L.Ed. 2d 60 (1970) (liquor related businesses).

Warrantless administrative searches are deemed reasonable "only so long as three criteria are met." Burger, 482 U.S. at 702.

> First, there must be a "substantial" government interest that informs the regulatory scheme

> pursuant to which the inspection is made . . .
>
> Second, the warrantless inspections must be necessary to further [the] regulatory scheme. Donovan v. Dewey, 452 U.S. at 600. . . .
>
> Finally, "the statute's inspection program, in terms of the certainty and regulatory of its application [must] provide a constitutionally adequate substitute for a warrant." Ibid. In other words, the regulatory statute must perform the two basic functions of a warrant: it must advise the owner of the commercial premises that the search is being made pursuant to the law and has a properly defined scope, and it must limit the discretion of the inspecting officers. . . To perform this first function, the statute must be "sufficiently comprehensive and defined that the owner of commercial property cannot help but be aware that his property will be subject to periodic inspections undertaken for specific purposes." Donovan v. Dewey, 452 U.S. at 600.

482 U.S. at 702-03.

There is no question that administrative searches of persons entering a courthouse are justified by substantial government interest. The government interest is in the safety of

the court personnel and integrity of the court facility.

The second criterion described in Burger, that the inspection is necessary to further the regulatory scheme, cannot be met by the search conducted in this matter. In order to protect court personnel and the court facility, the administrative search in this matter must be designed to prevent entry of dangerous weapons or explosive devices. Weapons or explosive devices that are not brought onto the premises are not properly subjected to an administrative warrantless search.

The Order of the Strafford County Superior Court (Appendix C) that created the administrative search in this matter recognizes the constitutional need to limit searches to personal property brought onto the premises. "If a person passing through

the [metal detection] device causes it to register positively, and still wishes to enter the court facility, such person is subject to further screening checks in order to find the cause for the screening device reacting positively." Id.

From the foregoing, it is reasonable to conclude that a person may forego entry into the court facility if he or she causes the device to react and does not wish to submit to a further check of his or her person or belongings. This approach was adopted by the General Services Administration and was the subject of inquiry in Downing v. Kunzig, 454 F.2d 1230 (6th Cir. 1972). In Downing, the General Services Administration had issued a directive that required inspection of packages. The directive provided that "[a]dmittance should be denied to

anyone who refuses to voluntarily submit packages for examination." 454 F.2d at 1231. In McMorris v. Alioto, 567 F.2d 897 (9th Cir. 1978), the Court of Appeals, in an opinion by then Judge Anthony Kennedy, considered a similar administrative inspection system that allowed the person subject to inspection to withdraw from the search and not enter the building.

> "A visitor who activated the [metal detection] device was free to leave the Hall of Justice without further search and without questioning. . . If an individual activated the magnetometer, he could empty his pockets of metals and pass through a second time. If, after the second pass, the individual continued to activate the device, he would not be admitted into the courthouse unless he submitted to a pat-down search."

567 F.2d at 899.

The New Hampshire court administrative search regulation, as applied in this matter, did not afford

Petitioner the opportunity to withdraw from the building rather than submit to the administrative search. Petitioner did not require her pocketbook in order to enter the court facility. Certainly, Petitioner did not require the Sucrets container to be on her person. Petitioner could have locked both the purse and the Sucrets container in her vehicle and entered the building without them. The right to avoid subjecting one's personal belongings to an administrative search also is discussed infra as part of the consent issue raised in this case.

Finally, the New Hampshire administrative search regulation does not meet the third criterion of the administrative search exception as set out in Burger. The regulation in Burger was justified because it was so well-defined that the owner of

commercial property could not help but be aware that his property would be subject to periodic inspections. Here, Petitioner was not aware that the "weapons" search would include the opening and search of the small Sucrets box.

There is evidence in this case that the bailiff, a person with twenty-one years of law enforcement experience, knew of weapons or devices that could be secreted in the small metal container that was seized from the Petitioner. However, there is no evidence in this matter that Petitioner understood the possibility of her Sucrets container becoming the subject of a search for weapons. The matter is, thus, distinguishable from the railway employee in Skinner, supra.

> Both the circumstances justifying toxicological testing and the permissible limits of such

> intrusions are defined narrowly and specifically in the regulations that authorize them, and doubtless are well known to covered employees."

Skinner v. Railway Labor Executives' Assn, 489 U.S. at 622 (1989) (Citation omitted.) (Emphasis added.)

2. The Right to Refuse Consent (i.e., To Leave the Facility).

The Petitioner does not dispute the rationale of United States v. Pulido-Baquerizo, 800 F.2d 899 (9th Cir. 1986) cited by the New Hampshire Supreme Court. Once a party allows an administrative inspection of his or her belongings to begin, that party should not be permitted to withdraw his or her consent. In the context of airplane pre-boarding searches, the right to withdraw consent would encourage potential hijackers to determine how best to defeat airport security

systems. Once begun, it is reasonable to continue and conclude administrative searches. This is consistent with the regulatory purpose for said searches.

The rationale that favors continuation and conclusion of an administrative search does not also justify, by implication, a complete relinquishment of one's expectation of privacy as one approaches a security checkpoint. Prior to placing one's luggage in the x-ray machine at the airport, and prior to entering the magnetic metal detector at the courthouse, neither system would be defeated and the regulatory purpose of an administrative search would not be defeated if notice was clearly provided to the person entering the facility that he or she may withdraw without being subjected to a search.

In Schneckloth v. Bustamonte, 412

U.S. 218, 93 S. Ct. 2041, 36 L.Ed. 2d 854 (1973), this Court expressly rejected a requirement that a person's consent to search was conditioned upon advisement that he or she has the right to refuse consent. Rather than requiring advisement analagous to the Miranda warnings, the Court concluded that a failure to advise of a right to refuse consent was only one of a number of factors that were to be considered in determining the totality of circumstances related to the consent to search. 412 U.S. at 233-34.

The instant search exists, however, at the confluence of two exceptions to the search warrant requirement contained within the Fourth Amendment to the United States Constitution. The first exception relates to actual consent and is that described in Schneckloth. The second exception is

one of presumed consent and is exemplified by the regulation at issue in Burger v. New York. The two exceptions to the Fourth Amendment's warrant requirement have been clearly distinguished, one from the other, by then Judge Kennedy in McMorris, 567 F.2d at 901 ("nor do we doubt that their consent in these circumstances would be insufficient to constitute the voluntary consent, frequently motivated by a desire to cooperate with law enforcement officials, necessary to validate a warrant list, full-scale search for evidence of a crime. Schneckloth v. Bustamonte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed. 2d 854 (1973).")

The dictates of Schneckloth should not be imposed in the context of a regulatory search. Relegation of a warning to only one of a totality of

factors that must be considered is inappropriate. Knowledge of the potential for a warrantless search is the sine qua non for the exception. This Court should make the requirement of a warning explicit in the context of administrative searches.

XI. CONCLUSION.

WHEREFORE, Petitioner respectfully requests the Court issue a Writ of Certiorari to the New Hampshire Supreme Court to review its decision of August 2, 1991 in this matter.

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XII. APPENDIX.

A. AGREED STATEMENT OF FACTS CONCERNING MOTION TO SUPPRESS EVIDENCE:

NOW COME the defendant and the State and agree on the following facts:

1. That on May 5, 1989, she drove to the Strafford County Justice and Administration Building which is located on County Farm Road in Dover, New Hampshire.

2. That the Strafford County Superior Court is located on the second floor of the Strafford County Justice and Administration Building.

3. That in order to get to the second floor of the Strafford County Justice and Administration Building, it is necessary for one to enter the building and go to an elevator located in the front lobby.

4. That although there are other stairways which could, in theory, take

one to the second floor in order to get to the Strafford County Superior Court, those other avenues of access, except for the elevator, are, for security reasons, either physically blocked off or marked clearly so they are not used by the general public.

5. That on that day there were several signs posted in the front lobby and on the elevator to the Strafford County Superior Court, which signs read: "All persons entering this court facility are deemed to have consented to security screening of their person and property for weapons."

6. That the Chief Justice of the Superior Court issued the Order regarding the security screening and search procedures.

7. That the defendant, on May 5, 1989, entered the elevator and took it to the second floor of the Strafford

County Justice and Administration Building.

8. That when the elevator door opened on the second floor, she existed the elevator and found herself at a security station managed by a bailiff.

9. That the security station located on the second floor of the Strafford County Justice and Administration Building has, as part of the security system, an airport-type screening device which is sensitive to metallic objects.

10. That, in addition to the airport-type security device, the bailiffs, in theory, also check any handbags, briefcases, and/or any other type of objects being carried by the person seeking to enter the second floor, and any containers found therein that the bailiffs suspect may contain weapons.

11. That the bailiffs who operate the security station are employees of the Strafford County Sheriff's Department.

12. That once a person passes through the security station, he or she is in a general lobby area off of which are located the Office of the Strafford County Superior Court Clerk, as well as the superior court courtrooms.

13. That the bailiffs who conduct the searches at the security station do not have valid search warrants.

14. That the security station, on May 5, 1989, was operated from 8:00 a.m. until 4:30 p.m.

15. That on May 5, 1989, around 4:00 p.m., when the defendant exited the elevator and entered the second floor of the Strafford County Justice and Administration Building, she saw the security station.

16. That when the defendant approached the security station, the bailiff did not have a search warrant regarding the defendant.

17. That at the time the bailiff saw the defendant exit the elevator, he did not recognize her from any previous contact.

18. That at the time the defendant exited the elevator, the bailiff had no information which would lead him to suspect a person fitting the defendant's description might be attempting to smuggle weapons into the courthouse.

19. That the security check the bailiff intended to execute on the defendant was the same type of security check he ran on every other person who came into the courthouse.

20. That when the defendant exited the elevator, she was accompanied by a

male.

21. That the defendant, as she approached the security check and observed the metal detector, appeared to be somewhat nervous.

22. That the bailiff explained the purpose of the security check to the defendant.

23. That the bailiff then requested the defendant hand him her pocketbook.

24. That as a result of the conversation, the bailiff received the defendant's pocketbook.

25. That the defendant, as the bailiff received her pocketbook, told the bailiff he was scaring her.

26. That the bailiff responded there was no need to be scared, as he was just checking for weapons.

27. That the bailiff, before a search begins, typically informs people

that they may leave rather than be searched, but cannot specifically remember whether he so informed the defendant.

28. That the defendant does not remember the bailiff informing her she had the right to leave rather than being searched.

29. The bailiff typically informs people that once he begins the search of their belongings, he does not stop until he is finished, even if requested to do so by the person, but does not specifically remember so notifying the defendant.

30. That the defendant does not remember the bailiff informing her about his policy to complete any search he begins.

31. That the bailiff who had contact with the defendant on May 5, 1989, had a policy of completing a

search, once he had initiated the search, regardless as to whether or not the defendant objected to the continuation of the search.

32. That the bailiff found, as he searched the last compartment of the pocketbook, Job papers.

33. That as the bailiff continued to search the defendant's pocketbook, he also found a Sucrets metal container in the last compartment of the pocketbook.

34. That the size of the Sucrets container was approximately 3 1/2 x 4 1/2 inches.

35. That the bailiff has found weapons concealed in small containers, including Sucrets boxes, during other searches, and is familiar with several deadly weapons that could be concealed in a Sucrets box.

36. The bailiff conducting the

search had been in law enforcement for 21 years as of May 5, 1989.

37. That the bailiff recognized Job cigarette papers can be used for the purpose of rolling marijuana cigarettes.

38. That the bailiff was also of the opinion people who usually have Job cigarette papers probably are using it for marijuana, as opposed to rolling legitimate tobacco cigarettes.

39. That when the bailiff saw the Job cigarette paper next to the Sucrets metal container in the last compartment being searched in the pocketbook, he suspected there could be marijuana or some other type of illegal drug in the Sucrets container.

40. That the bailiff also suspected the Sucrets container could contain a dangerous weapon, it being identical to containers in which he has

found weapons during past security searches.

41. That the defendant, as the bailiff held the Sucrets container in his hand, but before he opened it, reached across the table and grabbed the bailiff's hand.

42. That as the defendant grabbed the bailiff's hand, she tried to pull his hand and the container towards her.

43. That when the defendant grabbed the bailiff's hand, she said more than once, "Please don't open the container up."

44. That the bailiff instructed the defendant to remove her hand from his hand.

45. That the defendant clearly was not consenting to the search of the Sucrets container.

46. That the bailiff clearly understood, prior to opening the

container, the defendant objected to having the container searched.

47. That the bailiff opened the container over the defendant's objections.

48. That the bailiff believed he had the authority to open the container as part of the security check he was conducting.

49. That prior to opening the container, the bailiff did not have an opportunity to shake it to attempt to determine its contents, since the defendant grabbed his hand as soon as he took the Sucrets container out of her pocketbook.

50. That the bailiff was holding the can in his right hand.

51. That during the search of the pocketbook and the can, the male, who initially walked off the elevator with the defendant, remained with her during

the entire incident.

52. That when the bailiff opened the Sucrets container, he observed what he believed to be 7 burned marijuana cigarettes and one unburned marijuana cigarette.

53. That after seeing what he believed to be marijuana in the Sucrets container, the bailiff asked for, and received, information to identify the defendant.

Respectfully
submitted,
RENEE PLANTE
By her Attorney

May 11, 1990 /s/ Stuart Dedopoulos
Stuart Dedopoulos

Respectfully
submitted,
Office of the
Strafford County
Attorney
By its Attorney

May 11, 1990 /s/ Andrew Ouellette
Andrew Ouellette

B. OPINION OF NEW HAMPSHIRE SUPREME COURT IN STATE OF NEW HAMPSHIRE V. RENEE PLANTE:

BROCK, C.J. The defendant, Renee Plante, was convicted of possession of a controlled drug, marijuana, RSA 318-B:2 (Supp. 1990), and appeals from an order of the Superior Court (Nadeau, J.) denying her motion to suppress evidence obtained during a warrantless security search. On appeal, she contends that the trial court erred in denying her motion, alleging that the evidence was the product of a search in violation of the State and Federal Constitutions. For the reasons that follow, we affirm.

The following facts are taken from an agreed statement of facts. On May 5, 1989, the defendant and her husband went to the Strafford County Justice and Administration Building, on the

second floor of which the Strafford County Superior Court is located. Prominently displayed signs in the lobby and elevator of the building state: "All persons entering this court facility are deemed to have consented to security screening of their person and property for weapons." Persons who wish to enter the secured area where the courtroom is located must submit to a search by a magnetometer, which is a walk-through device for detecting metallic objects, and to an inspection of handbags and briefcases by the bailiff. When the defendant exited the elevator and discovered the security station, she showed signs of nervousness. She relinquished her handbag to the bailiff upon his request, and indicated that his request frightened her. The bailiff replied that the search was

merely a check for weapons, and that the defendant had no reason to be frightened.

Ordinarily, the bailiff, prior to commencing a search, informs visitors that they may leave the building rather than submit to the search, and that once he begins searching, he does not stop until he has completed the search. Neither the bailiff nor the defendant recalls whether the bailiff so informed the defendant. Upon searching the defendant's handbag, the bailiff discovered a packet of cigarette rolling papers and a 3 1/2-inch by 4 1/2-inch metal container bearing the label of "Sucrets" throat lozenges. He suspected that the Sucrets box contained either illegal drugs or dangerous weapons. Before the bailiff could open the container, however, the defendant seized his hand and urged him

several times not to open the container. After ordering the defendant to let go of his hand, the bailiff opened the container and discovered seven burned and one unburned marijuana cigarettes.

The defendant was arrested and charged with possession of a controlled drug. RS 318-B:2 (Supp. 1990). The Dover District Court convicted the defendant and imposed a ten-day suspended sentence and a fine of $150. The defendant appealed the conviction to the superior court, where she filed a motion to suppress the evidence seized from the Sucrets container asserting, inter alia, that the search violated the warrant requirement contained in part I, article 19 of the State Constitution and the fourth amendment to the United States Constitution. The motion was denied,

and this appeal followed.

On appeal, the defendant admits that she voluntarily submitted to a search of her handbag for weapons. However, the she contends that the search of the Sucrets container in the handbag was an unreasonable search not falling within the administrative search exception, because it is not plausible that a weapon or explosive device could be concealed in a container of such small dimensions. She asserts that the bailiff did not attempt to open the Sucrets container until after he discovered the rolling papers, which were of a type suitable for making marijuana cigarettes. She contends that his discovery caused him to open the container because he suspected that marijuana was likely to be found near where rolling papers were found, thereby making the search part

of an unlawful criminal investigation for contraband rather than an administrative search for weapons. She also argues that she withdrew her consent by expressly objecting to the search of the container, and asserts that the bailiff should have informed her that she was free to leave and avoid the search, and that once he began the search he would not stop until it was completed. The State, on the other hand, argues that the defendant was put on notice of the search and voluntarily submitted to it by choosing to enter the courthouse and by relinquishing her handbag to the bailiff. The State also contends that the bailiff's search was minimally intrusive and conducted for the lawful purpose of detecting weapons.

The issue we must decide in this appeal is whether the search of the

Sucrets container was a reasonable search falling within the administrative search exception, and whether the defendant had the right to terminate the search once she relinquished her handbag to the bailiff. We first look to the protection afforded under the New Hampshire Constitution, and only look to the Federal Constitution to the extent that it affords greater protection. State v. Ball, 124 N.H. 226, 231-32, 471 A.2d 347, 350-51 (1983). We use federal case law only as an aid to our analysis. See Michigan v. Long, 463 U.S. 1032, 1040-41 (1983).

"A warrantless search is per se unreasonable and invalid, unless it comes within one of a few recognized exceptions." State v. Theodosopoulos, 119 N.H. 573, 578, 409 A.2d 1134, 1137

(1979), cert. denied. 446 U.S. 983 (1980) (citing Mincey v. Arizona, 437 U.S. 385, 390 (1978)); see U.S. CONST. amend. IV; N.H. Const. pt. I, art. 19. In this State we have explicitly adopted the administrative search exception. State v. Turmelle, 132 N.H. 148, 152, 562 A.2d 196, 199 (1980).

The purpose of an administrative courthouse search is to deter individuals from bringing dangerous weapons into courthouses. There is a compelling safety concern in courthouses due to the recent and increasing acts of violence directed at such institutions. If individuals were allowed to impede a search after it has commenced, they could be provided with a safe opportunity to avoid weapon detection. Such an opportunity would encourage persistent individuals to repeat their attempts to gain entry

with weapons. See United States v. Pulido-Baquerizo, 800 F.2d 899, 902 (9th Cir. 1986). These searches are conducted on a regular basis to all individuals wishing to enter and do not constitute discretionary acts by government officials. See New York v. Burger, 482 U.S. 691, 711 (1987)[6]. The search is narrowly tailored to discovery of dangerous weapons and explosives and the intrusion is limited to a walk-through metal screening device and a search of handbags and other parcels.

Dangerous weapons and explosives can be concealed in small containers no larger than the Sucrets container at issue in this case. Although the defendant argues that the bailiff had no reason to believe that the Sucrets box contained a weapon, the defendant signed an agreed statement of facts

which stated that the bailiff has found weapons in small containers including Sucrets boxes, during other searches, and is familiar with several deadly weapons that could be concealed in a Sucrets box. Moreover, the defendant voluntarily submitted to the search of her handbag when told by the bailiff that the search was a security check for weapons.

Upon reviewing the evidence in the record before us, we conclude that there was sufficient evidence to support the trial court's finding that the bailiff's search of the metal container wsa a reasonable search under part I, article 19 of the New Hampshire Constitution, within the context of an administrative search for weapons, and that once the defendant relinquished her handbag to the bailiff she did not retain the right to terminate the

search once it commenced.

Because the Federal Constitution affords the defendant no greater protection than our own, we need not make an independent federal analysis. See State v. Ball, 124 N.H. at 231-32, 471 A.2d at 3350-51; cf. United States v. Herzbrun, 723 F.2d 773, 776 (11th Cir. 1984) (no fourth amendment violation where individuals are not allowed to revoke consent to search at airport security checkpoint). Accordingly, we hold that the search was valid under the administrative search exception to the warrant requirement and therefore affirm the trial court's ruling.

Affirmed.

BATCHELDER, J., dissented; the other concurred.

BATCHELDER, J., dissenting: This case, although presented to the trial

court on an agreed statement of facts, is devoid of any referennce to the State's having satisfied its burden of showing that the defendant wsa advised of her right to leave the courthouse without submitting to the administrative search. See Florida v. Bostick, 59 U.S.L.W. 4708 (U.S. June 20, 1991) (police specifically advised defendant that he had right to refuse consent). I would reverse on that ground alone and would not reach the issue of the scope of the search.

C. ORDER RE: SEARCHES:

Under the provisions of RSA 159:19, a person who knowingly carries a loaded or unloaded pistol, revolver, or firearm or any other deadly weapon as defined in RSA 625:11, V, whether open or concealed or whether licensed or

unlicensed, upon his person or within any of his possessions owned or within his control in a courtroom or area used by a court, is guilty of a Class B felony, unless he or she is specifically authorized to do so by the Court or statute.

In order to insure compliance with RSA 159:19 and for the protection of court personnel and the public, no person, unless otherwise authorized, shall enter the Strafford County Superior Court facility without first passing through a security screening device. Briefcases, packages, pocketbooks or other receptacles carried in hand by such persons are also subject to screening procedures. If a person passing through the device causes it to register positively, and still wishes to enter the court facility, such person is subject to

further screening checks in order to find the cause for the screening device reacting positively.

Any weapons voluntarily produced prior to screening by persons wishing to enter the court facility may be temporarily stored with the Sheriff's Department, but weapons discovered in the course of screening procedures are subject to seizure.

All persons entering the Strafford County Superior Court Facility are deemed to have consented to the aforementioned security measures.

/s/ Richard P. Dunfey
Chief Justice
Superior Court